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Safely Navigating the Cyber-Minefield: Information Management Across Borders

by John J. Tracy CMC FIMC and Kenneth N. Rashbaum, Esq.

Most companies consider information to be among their most valuable assets, but the ability to manage information can be elusive when data is transferred across borders.

The complexities of cross-border information transfer and global records management, including emails between employees in Europe, Asia, South America and Australia, include the potential for violation of foreign privacy or data protection laws, some of which carry criminal penalties. But as with many regulatory thickets, this presents liabilities for multinational corporations and opportunities for management consultants.

The Multinational Information Challenge

As business expands its global footprint, this problem looms larger yet, at the same time, creates new opportunities for management consultants.

Today, over 90% of all business information is digital. This includes email and attachments, social media, and all types of transaction documentation, such as contracts, purchase orders, invoices, and interim agreements. The information may be “virtual,” but the headaches can be big-time real. There is an increasing need to preserve electronic business information in a manner which complies with a mosaic of laws.

As if these complexities weren't enough to move Records Management personnel and business owners to demand combat pay, layered on top are the myriad accelerating demands for digital information, from government oversight agencies, commercial partners and competitors, and courts.

We're Not in Kansas Anymore

Digital information is the primary form of evidence needed for dispute settlement in the U.S., the U.K., Australia, Europe and elsewhere. But in terms of privacy and data protection beyond U.S. borders, it's different over there.

Many countries prohibit the transfer of “Personal Information” beyond their borders without consent. The U.S. is an exception. Email is considered “Personal Information” because it can be traced to an identifiable individual. Thus, contracts, invoices, purchase orders, proposals, etc. that include individuals' names may also be “Personal Information.”

Multinational Information Governance Solutions

Management consultants transform the complex into the manageable by understanding the problem, breaking it down into pieces that business units can attack, and devising practicable solutions. Cross-border information governance may be a thornier problem, but that only means that consultants will require larger and sharper shears.

To assuage risk, Data Management programs implemented by consultants, working with knowledgeable legal counsel in the U.S. and the countries where the corporation has facilities, must clearly document Policies and Procedures for handling data from outside the U.S.; provide training and documentation on the Protocols; and establish Compliance Monitoring and Information Security Standards (privacy, access control, breach and loss prevention, etc.). For example, personal data from European Union member states may be sent to the U.S. so long as appropriate protections for the data are in place, as set forth in Data Transfer Agreements with "Model Clauses" approved by every E.U. member state. The U.S. Department of Commerce Safe Harbor Program provides for personal data transfer in accordance with a Privacy Statement, in which the U.S. entity agrees to abide seven principles of data confidentiality and security. The challenge, and the opportunity for management consultants, is to prepare information management policies and procedures which adhere to those principles, design training materials for the workforce, and monitor compliance.

Records retention and information management rules are not consistent among trading partners, however. Neither Canada, Australia, nor any Asian countries participate in the Safe Harbor Program and they do not recognize the E.U.'s Model Contract Clauses. Further, in several of those countries, privacy laws proscribe retention of personal data for longer than necessary to accomplish the purpose for which it was processed. This can cause migraines when the company is enmeshed in U.S. litigation.

To meet the global information management challenge, consultants and counsel should prepare records retention policies and procedures to account for internal Governance and external Risk and Compliance (including foreign litigation disclosure) needs.

Consultants should also facilitate an interdisciplinary work group that includes IT, Records Management, in-house counsel, U.S.-based counsel with cross-border information transfer experience and business owners (such as department chiefs), and document the work flow to show due diligence in the event that Records Management is challenged by a court or regulators.

Global commerce complexities have created roles for consultants and counsel. Opportunities abound to establish best practice awareness in records management and information governance, and these opportunities should increase in virtual lockstep with advances in information technology. Our challenge is to grasp them.

Kenneth N. Rashbaum, Esq., Principal of Rashbaum Associates, LLC, counsels the health care and life sciences industries and multinational corporations on information management and compliance with privacy and data protection laws. A thought leader in these areas, he frequently speaks at venues across the U.S., and in Europe and Asia.

John J. Tracy CMC FIMC, President of Tracy-Hayden Associates Inc., consults Fortune-listed and smaller enterprises on strategic, organizational and operational issues related to supply management, process effectiveness and customer service performance. Also a thought leader, John works, writes and speaks in domestic and many global venues.

Follow the Money: Big-Buck Associations Contend With Big-Buck Problems on Capitol Hill

by Mitchell P. Davis

While there are a few positive signs, the economy remains uncertain. So, where should consultants be looking for business? How about a place visited by everyone who is looking for a way to influence policies that affect their business? That's right: Washington DC, or at least firms that work there.



The *National Journal's* salary survey of the leaders at Washington's biggest trade associations, professional societies, think tanks, and interests groups reveals that big money is being spent to make sure Capitol Hill hears their take on any potential legislation that may impact them.

The April 3 edition of the *National Journal* reported: "The compensation of 89 top executives exceeded the \$1 million mark, according to 514 tax forms recording pay between 2007 and 2009 that *National Journal* and our partner *CEO Update* analyzed for this report. That's a 30 percent increase from our 2008 survey (covering 737 organizations between 2005 and 2007). Although nowhere near the sort of paydays common on Wall Street – we found some eye-popping numbers for the nation's capital."

"In Washington terms, those [salaries] are very, very generous," Larry O'Brien, head of lobbying firm OB-C Group, told the magazine.

National Journal went on to report: "Among the top earners in our review are John Castellani, president of the Business Roundtable, who received a total compensation package of \$5.57 million in 2008; Billy Tauzin, the departing CEO of the Pharmaceutical Research and Manufacturers of America, who made \$4.48 million; and Scott Serota, CEO of the Blue Cross and Blue Shield Association, who took home \$3.99 million. The highest compensation went to Marc Lackritz, the now-retired head of the Securities Industry and Financial Markets Association. He received an exit pay package that boosted his total compensation to \$6.76 million in 2008."

"It's hard for the rational mind to justify, given the economy," Pamela Kaul, president of executive search firm Association Strategies, told the magazine. "But it's the mystique of Washington. These are the power brokers that have the access to networks and relationships."

But it is not all mystique, Steve Anderson, CEO of the National Association of Chain Drug Stores, told the *National Journal*: "These jobs have become so complicated now that I don't think you can look at them in the vacuum of just a salary."

“It’s not just CEOs who are raking in the dollars; the lobbyists are doing quite well, too,” the magazine added.

And add to all this Washington’s bigger roles in the economy and elsewhere. These associations and other groups, funded by a membership which is made up of businesses, not individuals, require superb CEOs and great managers.

Opportunities await management consultants willing to do their homework and follow the money all the way to the groups spending big bucks – and needing help – to influence the policy-makers around Washington and the legislators on Capitol Hill.

For more information, here’s a link to the story at http://www.nationaljournal.com/njmagazine/cs_20100403_9562.php.

Mitchell P. Davis, IMC Member in Washington, DC serves associations, consultants and speakers with his Yearbook of Experts, and www.ExpertClick.com Website. Called a “dating service of PR” by PRWEEK - he helps the news media find interview sources.

Member News

New CMCs...We extend congratulations to Abrar Ansari, Vladimir Biruk and Todd Ordal who were awarded CMC designations in March. For more information about earning your certification as a management consultant, visit IMC USA’s [Certification page](#).

New Members... 24 new members joined IMC USA in March:

Arizona
Thomas Wilson
Roschele Zurbito

At Large
Abdullah AL-Khalaf
Mark Bobes
Jean Frankel
Garry Lloyd
Abdallah Mograby
Arthur Rubin
Michael Tamaro
Jacek Zoltak

Carolinas
Edward Gillespie
Leon Jablow

Dallas/Ft. Worth
Jeff Hicks
Jeffrey Van Ouwerkerk

Houston

Stephen Eccles

National Capital Region
Richard Kemp
Kacie Linegar

New England
John Doehring

New Jersey
Ronald Cannon

Northern California
Brian Carter
Robert Garrow
Philip McLemore

Oregon & Southwest Washington
Melody Maeyens

Pacific Northwest
Steven Kanzaki

Other Members in the News

Doug Box, DFW Chapter, has been in big demand as a speaker on family business. In February, he gave a presentation to undergraduate students studying family-owned business at the Institute for Family Business at Baylor University, Waco, TX. In April, he spoke on “Entrepreneurship and the Closely-Held Firm” to Executive MBA students at the Caruth Center for Entrepreneurship at Southern Methodist University in Dallas. He has also been invited to participate in a panel discussion at the Family Firm



Institute’s annual conference in Chicago in October, 2010.



George Moskoff, CMC, Northern California Chapter, has founded The Minerva Project (MP), which works to link Consultants with Non-Profits who are in need of help and collaborations in a meaningful way, using Open Space Technology and Appreciative Inquiry. Founded in Sonoma County in 2009, the group now has 20 members and is working on their 15th project with their 12th Non-Profit pro bono client. George is looking for consultants in southern California (LA Metro area; San Diego Metro area) to participate in this experiment that will partner with University Systems to create challenging

opportunities for consultants and exposure for IMC.

Kudos

Many IMC members demonstrate professionalism and dedication “above and beyond the call of duty” to IMC, the consulting profession or clients. These folks deserve our recognition and **praise. This month, kudos go out to...**

Mark Haas, CMC, who is IMC’s webmaster extraordinaire. Many of us have relied on Mark to ably guide us in the workings of the IMC USA website. Mark is also immediate past IMC USA Board chair where he played a crucial role rebuilding IMC.



In Mark’s day job, he is President of Research and Organization Management, where he helps clients align strategy, operations, and culture to execute strategy and improve performance against mission. His expertise is in assessment, strategy, leadership, performance management, decision support, and process management.

I’ll Never Do that Again!

by William Dorman, CMC

At the conclusion of a sales call and fact finding mission, my firm submitted a proposal (requested by the CEO) to assess and measure the effectiveness of the current management and organization structure and to make recommendations for improvement. The objectives were crystallized after separate interviews with several VPs and the CEO. All agreed that a change was necessary due to internal power struggles, erratic production scheduling and a lack of communication. Can you say “silos”?



The engagement letter was approved and signed by the CEO. It included important contractual points such as a statement of work and, importantly, a “bail out” clause. This clause required 30 days notice for contract termination and for the client to pay the firm for all work up to the date of termination. An upfront payment of 1/3 of the 10-12 week project costs was invoiced with the engagement letter.

The client was a non-union, \$200MM manufacturing company with plants in three states produced plastic products, many custom-made, on a 3-shift basis. Its organizational structure consisted of Senior VPs in charge of other VPs who oversaw various operating functions including international business. The staff structure included the usual suspects: Finance, HR, PR, Marketing, Sales, Legal, Engineering and Manufacturing.

The company had a strategic plan but little attention was given it. Although scheduling systems were in place, the company actually operated on a day-to-day basis. Production departments spent most of the time putting out fires and handling panic calls. Schedule changes were constant because the CEO had special customers he wanted to serve above all others. He also was focused mainly on high volume business, although much of the more profitable business

was custom. In effect, a micromanager was at the helm with a limited financial focus, much to the exasperation of the Senior VPs who complained about “a lack of communication.”

Payment was received and work started with a small team of consultants assessing work flow, production data, communications and effectiveness, management practices, and budget forecasting.

It became apparent as we conducted our assessment that the power struggles were very real. The CEO was an authoritarian leader expecting no rebuttal on his orders. The Senior VP of Operations was very vocal to the study team about the lack of leadership and management practices throughout the production plants. Clearly she believed that she could do a much better job as CEO. Other VPs voiced similar opinions to us but were not as vocal about them.

As the study team made its way learning and assessing the overall organization, the Board of Directors was moving in a different direction. The Board fired the current CEO and appointed the Senior VP as his replacement. Later we learned that the outspoken Senior VP of Operations was related to one of the Board members.

Immediately the newly-minted CEO put a halt to the study and a hold on all new purchase orders, including our invoice for a second payment. We were already about 2 weeks into the second invoicing period and were finalizing our interim report at the time of contract cancellation.

We wrote a letter requesting payment, per our bail out clause, up to the time of the new CEO ending the contract. No payment appeared to be forthcoming during the next 30 days.

What should a consulting company do to get paid in a situation like this? Share your thoughts and comments by accessing the website news item for this column.

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